

REMARKS

Restriction Requirement and Species Election

In response to the restriction requirement set forth in the Office Action mailed February 29, 2008, Applicants hereby provisionally elect Group I, Claims 1-2, 6-9, 13 and 17, for examination, with traverse.

The Commissioner may require restriction if two or more independent and distinct inventions are claimed in one application (35 U.S.C. §121). In the present case, although the claimed subject matter may be classified in different classes, the inventions are not distinct. Indeed, in an Office Action dated August 23, 2002, the examiner combined claims directed to an immunoassay method into a single invention.

Additionally, applicants believe that the claims of the remaining group (Group II) are sufficiently related to be examined together, and that such examination would not place an undue burden on the Examiner. M.P.E.P. § 803 states that, if “the search and examination of an entire application can be made without serious burden, [then] the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” Therefore, applicants request that the examiner reconsider her position regarding this restriction requirement and examine the claims of Groups I-II as one invention.

In addition, a species election has been required, requiring election of a species directed to a specific soluble HM1.24 antigen protein according to the pending assay claims. Applicants elect species (a), a protein having the amino acid sequence modified by lacking 17 amino acid residues from the C-terminal in the amino acid shown in SEQ ID NO: 1, but not lacking the 27 amino acid residues from the N-terminal. The examiner, however, is reminded to follow the procedure in M.P.E.P. 803.02 and extend the search to the other species recited in the claims, should the elected species be free of the prior art.

Sequence Compliance

In response to the Notice to Comply mailed with the Restriction Requirement of February 29, 2008, applicants submit that the Sequence Listing filed on May 30, 2001 is in full compliance with 37 CFR §§1.821-1.825 for the reasons that follow.

The Notice to Comply indicates that the sequence listing includes both nucleic acid sequences and amino acid sequences sharing a single SEQ ID NO, for example SEQ ID NO:1. As provided in further detail in the chart below, the amino acid sequences are disclosed as separate SEQ ID NOs. The chart outlines the SEQ ID NOs. for the nucleotide sequences of the application, and separate SEQ ID NOs. for the amino acid sequences of the application.

| <u><223> nucleotide sequence</u> | <u><223> amino acid sequence</u> |
|---|---|
| SEQ ID NO:1 | SEQ ID NO:20 |
| SEQ ID NO:2 | SEQ ID NO:21 |
| SEQ ID NO:3 | SEQ ID NO:22 |
| SEQ ID NO:4 | SEQ ID NO:23 |
| SEQ ID NO:5 | SEQ ID NO:24 |
| SEQ ID NO:6 | SEQ ID NO:25 |
| SEQ ID NO:16 | SEQ ID NO:26 |
| SEQ ID NO:17 | SEQ ID NO:27 |
| SEQ ID NO:18 | SEQ ID NO:28 |
| SEQ ID NO:19 | SEQ ID NO:29 |

As provided above, the nucleic acid and corresponding amino acid sequences are in fact represented by distinct sequence identifiers. Accordingly, applicants respectfully request that the objection to the sequence listing be withdrawn.

CONCLUSION

Applicant reserves the right to file divisional applications covering the subject matter of the non-elected claims.

Applicant respectfully requests examination on the merits of this application. Should there be any questions concerning this application, Examiner Foster is invited to contact the undersigned at the number listed below.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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